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***Attorneys for Plaintiffs Capana Swiss Advisors AG  
and AmeriMark Automotive AG***

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss corporation; AMERIMARK AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;  
NICHOLAS THAYNE MARKOSIAN, an individual;  
JOHN KIRKLAND, an individual;  
and VICKY SMALL, an individual,

Defendants.

**REPLY IN SUPPORT OF PLAINTIFFS'  
MOTION FOR LEAVE TO AMEND THE  
VERIFIED COMPLAINT**

Case No. 2:23-cv-00467

Judge: Hon. Robert J. Shelby  
Magistrate Judge: Hon. Cecilia M. Romero

Plaintiffs Capana Swiss Advisors AG (“Capana”) and AmeriMark Automotive AG (“AmeriMark Automotive” and together with Capana “Plaintiffs”) respectfully submit this Reply in Support (“Reply”) of their Motion for Leave to Amend their Verified Complaint (the “Motion”).

### **INTRODUCTION**

Defendants’ Opposition to Plaintiffs’ Motion (the “Opposition”) stems from Defendants’ apparent misunderstanding of the Federal Rules of Civil Procedure and the timing of Plaintiffs’ Motion. Far from being “illogical and moot,” the Motion was necessary because Plaintiffs filed their Motion after the twenty-one (21) day period during which they could amend their complaint as a matter of right pursuant to Fed. R. Civ. P. 15(a). In any event, Defendants’ Opposition states that they do not oppose Plaintiffs’ request to file the proposed Verified First Amended Complaint (the “Amended Complaint”). Accordingly, Plaintiffs have filed the Amended Complaint contemporaneously with this Reply.

### **ARGUMENT**

On September 15, 2023, Plaintiffs filed their Motion seeking to amend their Verified Complaint (the “Original Complaint”) after the statutory time to amend as a matter of course had passed. Federal Rule of Civil Procedure 15(a)(1) allows a party to amend their pleading once as a matter of course: “(A) 21 days after serving it; or (B) ... 21 days after service of a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(A), (B). Plaintiffs filed their Motion more than twenty-one (21) days after Defendants accepted service of the Original Complaint on July 19, 2023, [ECF No. 3], but before a responsive pleading was filed. Thus, Plaintiffs were required to seek leave in order to amend under Federal Rule of Civil Procedure 15(a)(2).

After Plaintiffs filed the Motion, Defendants filed their Answer on September 18, 2023. [ECF No. 11]. Defendants appear to concede that under Rule 15(a)(1)(B), Plaintiffs may now file their Amended Complaint as a matter of course. Fed. R. Civ. P. 15(a)(1)(B). As such, Plaintiffs have filed their Amended Complaint contemporaneously with this Reply,

**CONCLUSION**

Because Defendants agree that Plaintiffs may file their Amended Complaint as a matter of course, Plaintiffs have filed their Amended Complaint and request that it be deemed operative.

DATED this 10th day of October, 2023.

PARSONS BEHLE & LATIMER

/s/ Erik A. Christiansen

Erik A. Christiansen  
Benjamin D. Perkins

VENABLE LLP

Sarah E. Diamond (*Admitted Pro Hac Vice*)

*Attorneys for Plaintiffs Capana Swiss  
Advisors AG and AmeriMark  
Automotive AG*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of October 2023, I filed the foregoing **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE VERIFIED COMPLAINT** via the Court's CM/ECF system, which provided notice of such filing to all counsel of record.

*/s/ Michelle Orton-Brown* \_\_\_\_\_